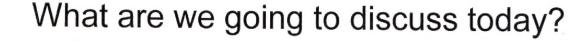


# Planning for the Future Legal Aspects to Consider<sub>®</sub>

Antonio Escudero Viera - Partner McConnell Valdés

New Jersey Hispanic Bar Association Friday, April 22, 2005



### In light of Hypothetical Number #1

- Our friend born in Puerto Rico, relocated to New Jersey with property in P.R.
  - Community Property
  - o Inheritance
  - o Wills

## Some Basic Concepts

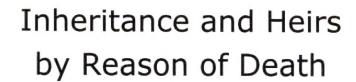
- o Domicile and Residence
- Personal and Real Property



- Effect of each one at time of death
- Community Property 50/50% Rule
- Ante-nuptial Agreements Each spouse keeps her/his property

## Particular Cases

- Pension Plans
- Savings Plans (401K's and 365e's)
- Bank and other Joint Accounts
- Life Insurance policies



# When a person dies, one of two successions happens

- Testamentary
- o Intestate

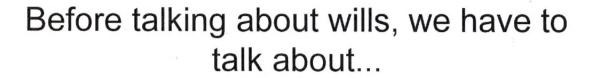


- Whether to accept or reject; or
- If accepted, whether unconditionally on condition that an inventory be made

the second of th



- Because once accepted unconditionally, the heir inherits everything (good and bad)
- For Example the house and the mortgage



- The rules of the One thirds
- Who are the forced (obligatory) heirs?



#### The thirds are

- Legal Portion ("Legitima")
- Extra Portion ("Mejora")
- Free Disposal



- To children/descendants or
- o In their absence, parents
- o In equal parts



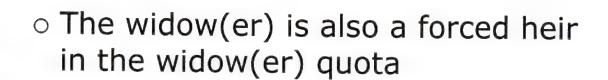
# Mejora

- To children and descendants
- o In the proportion the testator wants



# Free Disposal

o To anyone

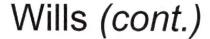




 For a "P.R.- born" person domiciliary of New Jersey
Applicable law will be New Jersey, except for real property located in P.R.

# Wills (cont.)

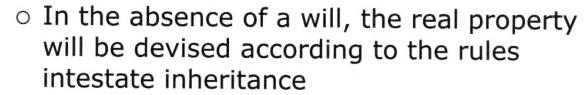
 For real property located in P.R.
Property must be devised according to P.R. law



 If the will is probated in New Jersey, then the will must be domesticated in P.R. via exequatur

## Wills (cont.)

 If there is no will, then
A court proceeding known as a declaration of heirs "Declaratoria de Herederos" is required.



- #1st order Descendants
- #2nd order Ascendants
- #3rd order Collaterals brothers, sister and nieces and nephews
- #4th order Surviving Spouse
- #5th order Other relatives
  - #6th order Commonwealth of P.R.



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